

**JUDGE SWAN****08 CV 02215**

BLANK ROME, LLP  
Attorneys for Plaintiff  
Jeremy J.O. Harwood (JH 9012)  
405 Lexington Avenue  
The Chrysler Building  
New York, NY 10174  
(212) 885-5000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

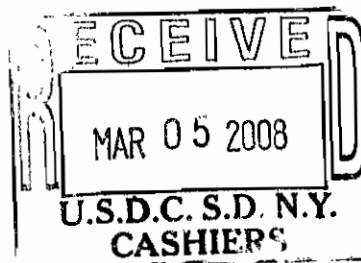
HORUS SHIPPING AND TRANSPORT  
S.A.E.,

Plaintiff,

v.

EGYPT CEMENT TRADING AND  
EXPORT,

Defendant.



08 Civ.

**VERIFIED COMPLAINT**

Plaintiff HORUS SHIPPING AND TRANSPORT S.A.E. ("Plaintiff"), by its attorneys Blank Rome, LLP, complaining of the above-named Defendant EGYPT CEMENT TRADING AND EXPORT ("Defendant" or "Egypt Cement"), alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. The Court has subject matter jurisdiction.

2. At all material times, Plaintiff was and now is a foreign company organized and existing under the laws of Egypt.

3. At all material times, Defendant, Egypt Cement, was and now is a corporation organized and existing under the laws of Egypt.

**THE BASIC FACTS**

4. Plaintiff acted as disclosed agent for Defendant, as principal, in obtaining the charter of a vessel, M.V “KATERINA G,” from her owner ERGO SHIPPING SA (“Ergo”) pursuant to a charter dated on or about February 5, 2008 (the “Charter”).

5. The “fixture recap” dated on or about February 6, 2004 expressly referred to:

A/C [Account] “Horus Shipping & Transport S.A.E.” On behalf of Egypt Cement Trading & Export who chartered the following ships ...

[emphasis added]

6. Thereafter Ergo invoiced for hire due and owing under the charter and addressed those invoices to Plaintiff, which Egypt Cement failed to pay.

7. Ergo demanded London arbitration in respect, inter alia, of the non-payment of hire.

8. Plaintiff asserted that it was the agent for a disclosed principal, Egypt Cement, and not liable.

9. In a London arbitration award entitled “Ergo Shipping SA and Horus Shipping and Transport S.A.E. on Behalf of Egypt Cement Trading and Export” dated on or about July 20, 2007, a sole arbitrator rejected Plaintiff’s agency defense on the basis that Plaintiff should have returned to Ergo the freight invoice “explaining to them their alleged role of agents.”

10. Accordingly, the London Award held Plaintiff liable to Ergo in the sum of \$45,306.87, as Charterers under the Charter.

11. The validity of the Award has been challenged by Plaintiff in the Egyptian Courts.

12. Ergo commenced a Rule B action against Plaintiff by complaint dated August 23, 2007 entitled Ergo Shipping SA v. Horus Shipping & Transport S.A.E., 07 CIV 7478 (LAP) (the "Ergo Complaint").

13. The Court issued an ex parte Order of Maritime Attachment and Garnishment dated August 23, 2007 for the sum of \$73,800, as demanded in the Ergo Complaint.

14. Ergo has, to date, restrained \$41,085 in electronic fund transfers belonging to Plaintiff and seeks to attach the full sum sought in the Ergo Complaint.

### **COUNT I**

#### **CAUSE OF ACTION FOR BREACH OF CONTRACT AND FOR INDEMNITY**

15. Plaintiff repeats paragraphs 1 through 14 as if fully set forth herein.

16. Egypt Cement breached the express or implied agency agreement order which Horus negotiated the Charter on its behalf.

17. Egypt Cement is liable to Plaintiff for all its damages arising from the aforesaid breach and/or must indemnify and hold Plaintiff harmless

**COUNT II**

**RULE B RELIEF**

18. Plaintiff repeats paragraphs 1 through 17 as if fully set forth herein.

19. Plaintiff seeks issuance of process of maritime attachment in the sum of \$73,800 so that it may obtain security for its claims for damages and/or indemnity against Egypt Cement in respect of the London Award and/or Ergo Complaint and no security for Plaintiff's claim has been posted by Defendant or anyone acting on its behalf to date.

20. Defendant cannot be found within this district within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("Rule B"), but is believed to have, or will have during the pendency of this action, assets in this jurisdiction.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

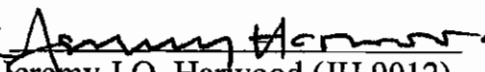
B. That since Defendant cannot be found within this District pursuant to Rule B, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B attaching all of Defendant's tangible or intangible property or any other funds held by any garnishee, which are due and owing to Defendant up to the amount of \$73,800 to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and, pursuant to Rule B, answer the matters alleged in the Verified Complaint;

C. That this Court retain jurisdiction over this matter through the entry of a judgment herein.

D. That Plaintiff may have such other, further and different relief as may be just and proper.

Dated: New York, NY  
March 5, 2008

Respectfully submitted,  
BLANK ROME, LLP  
Attorneys for Plaintiff

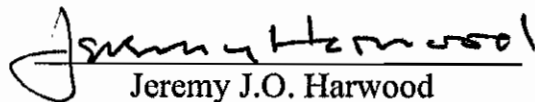
By   
Jeremy J.O. Harwood (JH 9012)  
405 Lexington Avenue  
New York, NY 10174  
Tel.: (212) 885-5000

**VERIFICATION**


STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

Jeremy J.O. Harwood, being duly sworn, deposes and says:

1. I am a member of the bar of this Honorable Court and of the firm of Blank Rome, LLP, attorneys for Plaintiff.
2. I have read the foregoing Complaint and I believe the contents thereof are true.
3. The reason this Verification is made by deponent and not by Plaintiff is that Plaintiff is a foreign corporation, no officer or director of which is within this jurisdiction.
4. The sources of my information and belief are documents provided to me and statements made to me by representatives of Plaintiff.

  
Jeremy J.O. Harwood

Sworn to before me this  
5th day of March 2008

  
\_\_\_\_\_  
Notary Public

NEAL MITCHELL  
Notary Public, State of New York  
No. 01M16114408  
Qualified in New York County  
Commission Expires Aug 16 2012

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**AFFIDAVIT UNDER  
SUPPLEMENTAL RULE B**

STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

JEREMY J.O. HARWOOD, being duly sworn, deposes and says:

1. I am a member of the Bar of this Honorable Court and a member of the firm of Blank Rome, LLP, attorneys for the Plaintiff herein. I am familiar with the circumstances of the complaint and submit this affidavit in support of Plaintiff's request for the issuance of process of maritime attachment and garnishment of the property of defendant HORUS SHIPPING AND TRANSPORT S.A.E., a company organized and



existing under the laws of Egypt, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

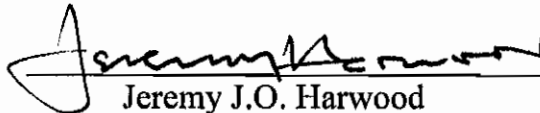
2. The defendant is not incorporated or registered to do business in this State.

3. Under my supervision, my office did a search of the New York State Secretary of State, Division of Corporations, Transportation Tickler (2007 edition), telephone assistance in New York City, and the internet Yellow Pages.

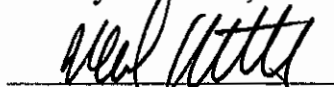
4. In our search, we did not find any listing or reference to defendant in this district or state.

5. In the circumstances, I believe the defendants cannot be "found" within this district.

6. I attach as Exhibit 1 hereto a copy of the "fixture recap."

  
Jeremy J.O. Harwood

Sworn to before me this  
5th day of March, 2008

  
Notary Public

NEAL MITCHELL  
Notary Public, State of New York  
No. 01M6114408  
Qualified in New York County  
Commission Expires Aug. 16, 2010



# **EXHIBIT 1**

fixture recap.txt  
From: Frontline Maritime Ltd [frontline@internet.gr]  
Sent: 06 YÉŃĆİŃ, 2004 11:01 Ő  
To: horusshp@menanet.net  
Subject: LgINT Message (REF:040EF5700)

TELIX MSG: 0EF57 06/02/04 11:01

FRONTLINE MAR LTD ATHENS-GREECE TEL. +30-210-8014715/6/7  
FAX. +30-210-8014718  
MAIL frontline@internet.gr

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Agiou Trifonos street N10 - Kifissia - Athens - Greece

ATT MR AHMED EL MONAYRI

DEAR AHMED ,

GOOD DAY

TO : ERGO SHIPPING S.A - OWNERS  
TO : HORUS SHIPPING AND TRANSPORT S.A.E.

MV ''KATERINA G''/ HORUS - CP 05/02/2004  
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CLEAN FIXTURE RECAP WITH ALL SUBS SHPRS/RCVRS APRVL IN ORDER  
=====

MV ''KATERINA G'' EX ''PERSEAS I''  
--

SID/LOG 16.482 MTS ON 9.1M - BLT '76 - PANAMA FLAG CLASS POLSKI REG - GRAIN/CO2/ITF  
FITTED - GRT/NRT 10013/6083 4HOHA - HADIMS NO1 : 12.80X(9.00-10.8) NO2/3/4 :  
20.52X10.92 G/B 738.956/718.944 CBFT - DERR 4 X 12 TS LOA/LBP/BEAM/DEPTH  
141.96/133.72/21.80/12.20 ALL IN MTRS SPEED/CONSUMPTION 11.0 KNOTS ON ABT 16.5TS IFO  
180 CST + 1.8TS MDO AT PORT IDLE/WORKING 1.8 MT MGO/2.5 MT MGO VSL BURNS MGO IN MAIN  
ENGINE WHEN MANEUVERS VSL'S GEAR NOT TO BE USED FOR LOAD/DISCHARGING AND FOR THE  
CARGO OPERATIONS VSL TO BE CONSIDERED GEARLESS  
= ALL DTLS ABT + WOG =

B) ADDITIONAL INFOS :

HEAD OWNERS : ERGO SHIPPING S.A  
MANAGERS : CHANNEL CARRIERS INC.  
CALL SIGN : 3FRE5  
IMO NUMBER : 7520217  
CLASSED : POLSKI REGISTER  
P+I CLUB : TERRA NOVA - UK  
HEIGHT FM TTOP TO TOP HATCHCOAMING 11.90 MTRS  
OTHER DISTANCES AS PER FAXED PLAN

OWNS CONFIRM TT THEY ARE THE SOLE OWNS OF THE ABOVE VESSEL  
N NOT THE DISPONENT OWNERS.VSL IS NOT ON TIME CHARTER OR BAREBOAT  
CHARTER OR ON LONG PERIOD TO THE OWNS AND NO OTHER PARTIES ARE  
INVOLVED. (OWISE TO STATE ABV FULL DETAILS OF T/CHTRS D/OWNS)

OWNS CONFIRM THAT PERFORMING VSL IS FULLY P AND I COVERED  
WITH 'TERRA NOVA'AND THAT ALL CALLS INCLUDING SUPPLEMENTARY  
CALLS, IF ANY ARE FULLY PAID UP AND VESSEL SHALL REMAIN SO  
COVERED FOR THE DURATION OF THE VOYAGE.

fixture recap.txt

OWNS P+I CLUB TO CONFIRM THAT VSL FULLY COVERED, I.E. THAT PREMIUMS HV BN PAID UPTO DATE. PSE FAX COVER NOTE .

OWNS CONFIRM THAT PERFORMING VESSEL IS CLASSED WITH POLSKI REGISTER AND SHALL REMAIN SO CLASSED FOR THE WHOLE DURATION OF THIS VOYAGE.

OWNS CONFIRM THAT PERFORMING VESSEL IS FULLY H+M INSURED AT A VALUE OF USD 1,500,000 AND SHALL REMAIN SO COVERED FOR THE DURATION OF THIS VOYAGE.

OWNERS CONFIRM THAT PERFORMING VESSEL IS SINGLE DECKER BULK CARRIER WITH HOLDS WHICH ARE FREE OF ANY OBSTRUCTIONS/BULKHEADS/ STANCHIONS/PILLARS N VESSEL IS IN EVERY WAY SUITABLE TO LOAD / SHIP / DISCHARGE THE INTENDED CARGO WITH SUFFICIENT FLAT FLOOR SPACE AND TANK TOP STRENGTH TO LOAD SAME.

OWNERS CONFIRM THAT PERFORMING VSL'S CERTIFICATES, ARE FULLY UP TO DATE AND SHALL RETAIN THEIR VALIDITY THROUGHOUT THIS VOYAGE

OWNERS CONFIRM THAT THE PERFORMING VSL AND THE COMPANY (AS DEFINED BY THE ISM CODE) SHALL, THROUGHOUT THE CURRENCY OF THIS CHARTER PARTY, COMPLY WITH THE ISM CODE N OWNS UNDERTAKE IF SAME REQUESTED TO FAX DIRECTLY TO THE CHARTERERS OFFICES IN ATHENS, PRIOR TO LIFTING OF SUBS, COPIES OF THE RELEVANT DOCS OF COMPLIANCE? (DOC) AND SAFETY MANAGEMENT CERTIFICATE (SMC).

OWNERS CONFIRM THAT THE PERFORMING VESSEL'S HATCHCOVERS/MANHOLES ETC ARE ABSOLUTELY WATERTIGHT AND IN GOOD CONDITION AND SHALL REMAIN SO THROUGHOUT THIS VOYAGE.

OWNERS CONFIRM THAT PERFORMING VESSEL SHALL NOT BE SOLD FOR SCRAP DURING THE COMPLETION OF THIS VOYAGE

OWNERS CONFIRM THAT PERFORMING VESSEL SHALL NOT BE SOLD DURING THIS VOYAGE WITHOUT CHARTERERS WRITTEN CONSENT.

OWNERS CONFIRM /DEMISE THAT PERFORMING VESSEL IS NOT BLACKLISTED AND THAT VSL HAS NO ENCRUMBRANCES WHICH MAY CAUSE HER ARREST OR DETENTION .

MASTER TO DECLARE QTY VSL WILL LOAD (ABOUT 15.700/15.900 MTS ) PRIOR VESSEL'S ARRIVAL LOAD PORT

OWNS TO ADVISE LAST THREE CARGOES/CHRTS - COMMENCING WITH LAST

- 1.BLK SBM // SILOS MARTINI ITALY
- 2.BGD FERTS // NORSE HYDRO
- 3.BLK GYPSUM// P.S.E B'LONA SPAIN

V/A/C "HORUS SHIPPING & TRANSPORT S.A.E." ON BEHALF OF EGYPT CEMENT TRADING & EXPORT " WHO CHATERERED THE FOLLOWING SHIPS : MV " KESTREL" & M/V " MIRICA L " & M/V " CAROLA G " FOR STEEL RAILS . YOU CAN ASK THE FOLLOWING REFERENCES :

1- P K Drycargo S. r. l.  
TEL: +39 0 544 420073  
FAX:+39 0 544 591600  
E-MAIL: chartering@navenna.it

2- Fierro Noleggi s a s  
TEL: + 39 081 8045517  
FAX:+ 39 081 8683295

fixture recap.txt  
E-MAIL: fierron@tiscalinet.it

SUB STEM/SHIPPERS/RECEIVERS APRVL WCH TO BE LIFTED WITHIN 24 WRKNG  
HOURS FROM FIXING M/TS .

ANY EVENTUAL FIXTURE TO REMAIN ABSOLUTELY P+C AND NOT TO BE  
REPORTED .

3 CONSECUTIVE VOYAGES IN DIRECT CONTINUATION.ON COMPLETION DISCH.  
OF THE 2ND VOYAGE CHRTS AND OWS TO DISCUSS FOR THE ADDITIONAL  
CONSEC VOYAGES .

LOADING METHOD :

CHTS CONFIRM LOADING TO BE DONE WITH PIPES THROUGH HOLES IN  
ALEXANDRIA OR BY DISCHARGE 1.5T JUMBO BAGS INTO HOPPERS WHICH  
LOAD THE BULK CEMENT THROUGHT THE SAME HOLES USING SHORE CRANES

DISCHARGE METHOD :

DISCHARGE BY GRABS / SHORE CRANES

LOAD / DISCHARGE PORT : 1SB AA ALEXANDRIA  
1SB AA VALENCIA

16.000 MT 5 PCT MOLOO BULK GRAY CEMENT STW DWT

L/C 1-10 MARCH 2004 (L/C TO BE NARROWED IN MAX 5 DAYS SPREAD  
15 DAYS BEFORE COMMENCEMENT OF L/C .

TIME USED BEFORE COMMENCEMENT OF LAYTIME TO COUNT HALF SHIFTING TIME FROM WAITING  
ANCHORAGE TO LOADING BERTH NOT  
TO COUNT AS LAYTIME BOTH ENDS  
TIME FOR DRAFT SURVEY TO COUNT BOTH ENDS

IF NEEDED TO OPEN HOLES THEN

TIME FOR OPENING AND CLOSING OF HOLES IF NEEDED NOT TO COUNT  
AND COST OF OPENING N CLOSING OF HOLES TO BE FOR OWNERS A/C  
IN CASE NEW HOLES TO BE OPENED THEN MASTER TO BE VERY CAREFULL  
WITH OPENING N CLOSING OF HOLES IN ORDER NOT TO FALL DOWN INTO  
THE HOLD(S) ANY METAL PIECE OWISE TO REMOVE SAME IMMY . THIS  
IS VERY IMPORTANT AS METAL PIECES MAY CREATE SERIOUS PROBLEMS  
TO THE UNLOADER EQUIPMENT.  
VESSEL HAS PERMANENT LOADING HOLES OF 600 MM DIA.

FRT RATE PER METRIC TON FREE IN/OUT/TRIMMED ON BS/LWEIGHT  
USD 21,00 PER MT .

FREIGHT PAYMENT: 100% PCT OF THE FREIGHT LESS 2.5% COMM.

IN US CURENCY TO OWNS NOMINATED BANK A/C WITHIN 3 BDAYS IAC BBB  
AFTER COMPLETION OF LOADING SIGNING RELEASING CONGENBILL 94

B'S/L MARKED 'FREIGHT PAYABLE AS PER CP DD ../../.. AND

'CLEAN ON BOARD' . FOR 'COB' BSL MASTER HAS THE RIGHT TO REJECT  
DAMAGED CARGO AND SHIPPERS/CHRS TO REPLACE SAME WITH SOUND ONE.

IN CASE CHRTRS REQUIRE 'FREIGHT PREPAID' BS/L SAME TO BE HELD

IN CUSTODY OF LDPORT AGENTS AND SHALL BE ONLY RELEASED WITH OWS'  
WRITTEN AUTHORITY IMMLY UPON RECEIPT OF CLEAR BANK SWIFT DETS  
SHOWING IRREVOCABLE PAYMENT OF FREIGHT .

IN ANY CASE MASTER IS OBLIGED TO DELIVER THE VSL'S THE

O.BS/L SIGNED AND STAMPED BY MASTER BEFORE SAILING O/W THE AGENT  
HAVE THE RIGHT NOT TO SAIL THE VSL UNTIL RECIEVE THE BS/L.

FREIGH IS FULLY PAYABLE ON SHIPMENT DANRVAOCLONL

DEM IF ANY TO BE SETTLED BTWN OWNERS/CHRS WITHIN 20 DAYS UPON  
TENDERING FULLY SUPPORTED LAYTIME CALCULATION.PHOTOCOPIES/FAX

fixture recap.txt

ACCEPTED.

LOAD/DISCHARGE RATES ALWAYS PER WWDAYS OF 24 CONSEC HRS:

L/RATE : 3000 FHINC SUPER HOL EXCL ( BIMCO S'HOL TO APPLY) D/RATE : 3000 SHEX SAT  
NOON/MON 0800 NTC UU ATUTC

AT BOTH ENDS N.O.R TO BE TENDERED BY MASTER  
WIBON/WICCON/WIPON/WIFPON IN WRITTING BY CABLE/TELEX/FAX PROVIDED  
THAT  
VSL IS ARRIVED AT VSL'S NORMAL WAITING AREA IN THE COMMERCIAL PORT  
DISTRIC.( AREA ) VESSEL IS CLOSE TO THE PORT LIMITS .  
IF N.O.R TENDERED B4 NOON THEN LAYTIME SHALL COMMENCE AT 14:00 HRS  
THE SAME DAY AND IF TENDERED AFTER NOON THEN LAYTIME SHALL COMMENCE  
AT 08:00 HRS THE NEXT WORKING DAY  
N.O.R TO BE TENDERED ALWAYS WITHIN OFFICIAL WORKING HOURS .  
N.O.R TO BE TENDERED MONDAY TO FRI 0800-1700 HOURS AND SAT 1200 HRS  
AT DISCHARGE PORT  
N.O.R IN ALEXANDRIA TO BE TENDERED WITHIN WORKING HOURS  
0800 TO 1700 HRS AND THURSDAY 0800 TO 1200 HOURS  
TIME NON REVERSIBLE BETWEEN L/D PORTS MASTER TO ADVISE VSL'S AGENTS  
AT BOTH ENDS VESSEL'S E.T.A AT 72,48,24 HOURS PRIOR OF THE VESSEL'S  
ARRIVAL.IN CASE MASTER FAILED TO SEND THE ARRIVAL NOTICE TIME WILL  
START COUNT AFTER 24 HRS FM ACCEPTING THE N.O.R.

DEM USD 6,750 PDPR / FDBE

FREE EXTRA INSURANCE

ANY TAXES DUES WHARFARGES CHARGES LEVIED ON CGO/FRGT OR CALCULATED  
ON SAME TO BE FOR CHARTERERS ACC BOTH ENDS.ANY TAXES DUES  
CHARGES ON VESSEL TO BE FOR OWNS ACC BE .

CHARTERERS AGENTS BENDS.

✓ = HORUS SHIPPING AND TRADING -AGENCY DEVISION ( AT LOAD PORT)

= SERVIMAD SERVICIOS MARITIMOS Y ADUANEROS VALENCIA SL  
(AT DISCHARGE PORT)

ARBITRATION IN LDN , ENGL LAW TO APPLY  
SMALL ARB CLAUSE TO APPLY ALSO FR AMOUNT NOT EXCEEDING USD 50,000

COMMISSION 2.5% (INCL 1.25%) ADDRESS ON F/D/D

OWISE EXECUTED PROFORMA C/P BASED ON MV ''CAPT YAMAK''  
DATED CAIRO 12/06/2002, UNLESS OWISE AGREED ON MAIN TERMS WITH LOGICAL AMENDMENTS  
AND FOLL ALTERATIONS

- CL 25 INSERT 'IN CASE VSL'S HOLDS FAIL SHIPPERS INSPECTION  
TIME FROM SUCH FAILURE UNTIL HOLDS READY AGAIN NOT TO  
COUNT AS LAYTIME'
- CL 26 DELETE AND READ  
'CHARTERERS/RECEIVERS TO DISCHARGE ALL THE CARGO  
FROM VSL'S HOLDS WITH ANY POSSIBLE ASSISTANCE FM THE CREW.

AFTER THE FIRST AND 2ND VOYAGES VESSEL TO PROCEED FOR  
LOADING,AFTER COMPLETION OF DISCHARGE, WITHOUT ANY  
FURTHER CLEANING OF THE HOLDS AND SHIPPERS TO ACCEPT VSL  
FOR LOADING.

FOR THE THIRD OR LAST VOYAGE CHRS/RECEIVERS TO ARRANGE FOR  
CLEANING AND SWEEPING AND CARGO REMOVEL FROM HOLDS FRAMES



fixture recap.txt

AND COMMERS WITH CREW ASSISTANCE IN COORDINATION WITH THE  
MASTER AGAINST A BONUS OF USD 2,000 TO BE PAID TO OWNERS  
DIRECTLY TOGETHER WITH THE FREIGHT.

CREW TO START CLEANING WHEN REQUESTED BY RECEIVERS OR THEIR  
AGENTS AND DISCHARGING TO BE CONSIDERED COMPLETED UPON  
REMOVAL OF ALL CGO FROM THE HOLDS''

- CL 27 AFTER 'CARGO' INSERT 'FREIGHT' (MAIN TERMS)
- CL 29 DELETE 'INCLUDING FREIGHT TAX IF ANY'
- CL 31 DELETE 'AS WELL AS VESSELS GEARS FOR LOADING/DISCHARGING  
OPERATIONS'
- CL 39 LOADING CONDITIONS  
ITEM (4) DELETE 'TIME FOR CONNECTING....NOT TO COUNT'

ENDS

THANKS FOR THE FIXTURE AND YR NICE COOPERATION

BEST REGARDS/GC